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**REMARKS**

*Cather: Pls provide ac to  
D/OIS, OGC, and SECDEF.  
Done - David  
23 June '83*

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
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5041-102

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OPTIONAL FORM 41 (Rev. 7-76)  
Prescribed by GSA  
FPMR (41 CFR) 101-11.206

*Copy for Mr. Fitzwater*

Washington, D.C. 20530

June 20, 1983

DD/A Registry  
83-0235/15

Robert M. Kimmitt  
Executive Secretary  
National Security Council  
Washington, D.C. 20506

DD/A REGISTRY  
FILE: 70-4

Dear Mr. Kimmitt:

By letter dated May 26, 1983, Steven Garfinkel, Director of the Information Security Oversight Office, has asked that the Department of Justice provide you with comments on three draft nondisclosure agreements that will implement paragraphs 1.a and 1.b of National Security Decision Directive 84, "Safeguarding National Security Information." A representative of the Department earlier received from your office a one-week extension of Mr. Garfinkel's June 10 deadline for submission of these comments.

We presume you recognize that the draft Sensitive Compartmented Information Agreement is much narrower in scope than even the existing SCI Agreement that is now in general use. While current agreements require submission for prepublication review where the author has "reason to believe," or some other subjective standard, the materials are derived from SCI, this form is limited to submission of materials that contain or purport to contain the relevant types of information. This means that, unless the author is writing about intelligence matters or is reckless enough to proclaim on the flyleaf that a book contains such information, only materials he is certain actually include such information need be submitted. The Government's remedies after publication will, correspondingly, be limited in such cases to instances where it is prepared to prove the actual inclusion in the text of classified materials. Presumably, these changes are a necessary accommodation in order to develop a broad-based agreement that alters the current agreement and extends the prepublication obligation beyond SCI alone. In doing this, however, the overall reach and effect of the agreement has been narrowed.

We have only two other brief comments. First, we support the changes to subparagraphs (a) and (b) of paragraph 5 of the draft Sensitive Compartmented Information Agreement that were distributed in Mr. Garfinkel's June 2 letter to affected agencies. We note, however, that the term "intelligence activities" in subparagraph 5(b), while perhaps well understood in the intelligence

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community, is a vague and somewhat meaningless phrase to many individuals with access to compartmented information. As such, it is likely to result in too much or too little material being submitted for prepublication review. We suggest that this term be defined somewhere in the agreement.

Second, paragraph 10, lines 5 through 11 of the Sensitive Compartmented Information Nondisclosure Agreement and paragraph 7, lines 5 through 10 of the Classified Information Nondisclosure Agreement provide that employees shall return all classified material which may have come into their possession or for which they are responsible upon demand by an authorized Government representative or upon the conclusion of their employment. These paragraphs are designed to permit the Government to retrieve all classified materials which are under the employees' control, either physically or administratively. As written, however, paragraphs 7 and 10 go far beyond this intent by providing for the recovery of all material that has ever come into the possession and control of an employee, regardless of whether the employee still has possession and control of the material.

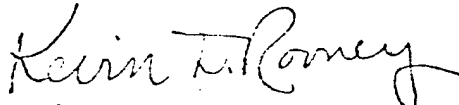
As you know, numerous employees receive, transmit, store, account for, destroy, and return to the originator classified documents. Literal employee compliance with the cited provisions would require an employee to retrieve documents from users and originators and not destroy any classified materials. These actions would be interruptive of operations, contrary to files management procedures, and in some instances impossible to perform.

In order to make the provisions of these two paragraphs consistent with their intent, it is recommended that the scope of the materials covered be limited to those under the physical and administrative control of the employee by inserting between the words "possession" and "or" the words "and remain in my possession," so that both provisions would read as follows:

I agree that I shall return all materials which have come into my possession and remain in my possession or for which I am responsible because of such access. . .

Finally, I understand that the final drafts of these three agreements will be submitted to the Department of Justice to be reviewed for legality and enforceability.

Sincerely,



Kevin D. Rooney  
Assistant Attorney General  
for Administration